THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 7680 of 2005

Oral order:

Respondent No.1-workman is Coal Filler with the petitioner-Singareni Collieries Company Limited. On the ground that he is a habitual absentee and that during 1998, he had put in only 91 days attendance, the petitioner-Company issued charge sheet to him. Respondent No.1-workman submitted his explanation. Not satisfied with the explanation, the petitioner-Company conducted enquiry. In the enquiry, respondent No.1-workman is said to have admitted the charges unconditionally. Accordingly, the enquiry officer submitted his report holding that the charges leveled against respondent No.1-workman are proved. Based on the enquiry report, the petitioner-Company issued notice dated 08.11.2001 to respondent No.1-workman to show cause as to why he should not be dismissed from service. Respondent No.1 submitted his explanation to the show cause notice. However, the petitioner-company, after carefully examining the same, by order dated 05.12.2002 dismissed respondent No.1-workman from service. Aggrieved by the order of dismissal, respondent No.1-workman raised an industrial dispute in I.D. No. 8 of 2004 before the Labour Court, Hyderabad. The petitioner-Company contested the I.D. The Labour Court, though upheld the validity of the departmental enquiry, and castigated the conduct of respondent No.1-workman, but felt that one last chance should be given to respondent No.1-workman, to improve his conduct. Accordingly, it set aside the order of dismissal, and passed an award directing reinstatement of respondent No.1-workman into service with certain conditions. Assailing the said award, the petitioner-company filed this writ petition.

The learned Standing Counsel for the petitioner-company submitted that the charges of unauthorized absence was proved in the enquiry. Based on the said proved charges, the petitioner-company dismissed him from service. The Labour Court having upheld the departmental enquiry, which held that charges against respondent No.1-workman are proved, and having castigated the conduct of respondent No.1-workman, ought not to have interfered with the punishment of dismissal, and directed his reinstatement into service with certain conditions. Hence, he prayed that the impugned award be set aside and the writ petition be allowed.

On 23.10.2007, none appeared for respondent No.1-workman. Therefore, the writ petition was ordered to be listed under the caption "for judgment". Today, though the matter is listed under the caption "for judgment", and despite passing over the matter to 2.15 p.m., neither respondent No.1-workman nor his counsel are present, nor is there any representation made on their behalf. Hence, this Court has no option, but to proceed on the basis of the material available on record.

Heard the learned Standing Counsel for the petitioner-Company and perused the impugned award.

As can be seen from the award, the Labour Court upheld the validity of the departmental enquiry, in which the charges of unauthorized absence was held proved. The Labour Court found that respondent No.1-workman's conduct was not satisfactory even after issuance of the charge sheet. That his attitude is not sincere and that he calls himself a union leader, that he informs about his absence over phone and that the management never insists any leave letter from him. The Labour Court observed that respondent No.1-workman being a union leader should know that he cannot absent himself by making phones and that too without giving leave letters. Observing so, the

Labour Court held that respondent No.1-workman does not deserve any sympathy. Though the Labour Court held that respondent No.1-workman does not deserve any sympathy, but yet to give a last chance to him, had set aside the order of dismissal, and directed his reinstatement into service with certain conditions.

The law is well settled that once the enquiry is held to be fair and proper, in the absence of any allegations of victimization or unfair labour practice, the Labour Court has no power to interfere with the punishment imposed, and it can only interfere, if the punishment imposed by the disciplinary authority, is found to be unjustified or illegal or punishment imposed is disproportionate to the gravity of the offence or is shocking to the conscience of the Court, but not when the order of dismissal is affirmed or justified.

In **Mahindra and Mahindra Ltd. v. N.B. Narawade**[1], the apex Court after referring to its various judgments, held that the discretion which can be exercised under Section 11-A of the Industrial Disputes Act, 1947 by the Labour Court is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment, and in the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment.

In the instant case, as stated supra, the Labour Court upheld the charges leveled against respondent No.1-workman, and though it castigated his conduct of unauthorized absence, and observed that he does not deserve any sympathy, yet it set aside the order of dismissal,

and ordered his reinstatement into service with certain conditions. For modifying the order of dismissal imposed by the disciplinary authority on respondent No.1-workman to that of reinstatement into service, the Labour Court has not assigned any reasons, much less discussed as to whether the punishment imposed was disproportionate to the gravity of misconduct so as to disturb the conscience of the Court or the existence of any mitigating circumstances, which required reduction of the punishment or the past conduct of the workman. In the absence of any reasons assigned by the Labour for modifying the order of dismissal imposed on respondent No.1-workman to that of his reinstatement into service with certain conditions in exercise of its discretion under Section 11-A of the Industrial Disputes Act, 1947,

I am of the considered opinion that the award passed by the Labour Court has to be set aside and the matter be remanded to it, for considering the question as to whether the punishment imposed by the disciplinary authority is disproportionate to the proved misconduct.

In the result, the writ petition is allowed. The impugned award passed by the Labour Court is set aside. The I.D. is remitted to the Labour Court for considering the question as to whether the punishment imposed by the petitioner-company is disproportionate to the proved misconduct, and if so, what is the just punishment that can be imposed. The Labour Court shall consider and decide this question, and pass appropriate award, after affording opportunity to both the parties. No costs.

N.V. RAMANA, J.

Date: 26th October, 2007
KSR

[1] (2005) 3 SCC 134